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**REPORT No. 22/16**  
**PETITION 189-08**  
REPORT ON ADMISSIBILITY

SAÚL GAMARRO MENESES  
GUATEMALA

Approved by the Commission at its session No. 2065 held on April 15, 2016  
157th Regular Period of Sessions

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Guatemala. April 15, 2016.



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**I. SUMMARY**

1. On February 19, 2008, the Inter-American Commission on Human Rights (hereinafter “Inter-American Commission,” “Commission” or “IACHR”) received a petition lodged by Mr. Saúl Gamarro Meneses on his own behalf (hereinafter “the petitioner” or “the alleged victim”), contending that the State of Guatemala (hereinafter “the State” or “Guatemala”) is internationally responsible for alleged violation of his right to property, a fair trial and judicial protection.

2. The petitioner contends that 30 thousand board feet of wood and a portable sawmill that belonged to him were unlawfully seized by the State in March 2014 and then deposited with third parties. He further alleges that these individuals appropriated these pieces of property and that he was unsuccessful in his attempt to recover them through the courts because the Office of Public Prosecution failed to act. In response, the State argues that the Office of Public Prosecution continues to carry out the criminal prosecution brought by the petitioner as a mechanism to restore the rights he considered to be violated and alleges that the petition is inadmissible on the grounds of failure to exhaust domestic remedies.

3. Without prejudice to the merits of the petition, after examining the positions of the parties and in keeping with the requirements set forth in Articles 46 and 47 of the American Convention, the Commission decides to find the case admissible for purposes of examination of the alleged violation of the rights enshrined in Article 8 (fair trial), 21 (private property) and 25 (judicial protection) of the American Convention on Human Rights (hereinafter, “the Convention” or “the American Convention”), in connection with Article 1.1 of the same instrument. The Commission has also decided to notify the parties of this ruling, publish it and include it in its Annual Report to the OAS General Assembly.

**II. PROCEEDINGS BEFORE THE IACHR**

4. The petition was received on February 19, 2008. On June 30, 2008, the Commission forwarded the relevant portions of the petition to the State, granting it a two-month period to submit its response, in keeping with Article 30.3 of the IACHR Rules of Procedure in force at the time. On October 1, 2008, the State submitted its response to the petition, which was forwarded to the petitioner on November 10, 2008. On December 10, 2008, the petitioner submitted his observations, which were forwarded to the State on March 19, 2009.

5. The Commission received additional comments from the petitioner on the following dates: December 9, 2008; May 7 and 11, 2009; June 3 and 29, 2009; August 11, 2009; September 14, 2009; October 8, 2009; January 14, 2010; March 3 and 15, 2010; May 13, 2010; August 4 and 16, 2010; January 25, 2011; November 18, 2011; February 25, 2013; and September 9, 2014. These communications were duly forwarded to the State.

6. For its part, Guatemala submitted information on the following dates: March 2, 2009; April 24, 2009; August 24, 2009; October 14, 2009; December 9, 2009; January 15, 2010; May 21, 2010; November 29, 2010; and March 10, 2011. These communications were also duly forwarded to the petitioner.

### III. POSITIONS OF THE PARTIES

#### A. Position of the Petitioner

7. The petitioner claims that the State of Guatemala is responsible for the seizure and subsequent wrongful deposit of his property with third parties, causing the loss of these pieces of property. He further argues that the State is responsible for denial of justice, because even though a court of law had ordered the return of his property, it was never returned to him, nor did the State ever conduct a serious investigation or punish those responsible for these acts.

8. By way of background to the seizure and unlawful conveyance of his property, he notes that as of 2000, he entered into an agreement with the members of the Nuevo Chunacté Community (hereinafter "the Community"), municipality of Chahal, Alta Verapaz, to use his portable sawmill to log trees for timber on their lands since they had secured a logging permit from the National Forest Institute (hereinafter, "INAB"). According to the petitioner, this wood would then be sold to him by the community members. Nonetheless, he claims that in December 2003, using an irregular certificate issued by the Land Fund (*Fondo de Tierras*), through an employee named Benjamín Roderico IC Coc (hereinafter, "Mr. Roderico"), Mr. Fernando Valle Arizpe (hereinafter, "Mr. Valle") filed a complaint with the Office of Public Prosecution against the community members contending that they had trespassed onto his land, had engaged in illegal logging and built houses thereon with the intent to remain on his property. Mr. Gamarro alleges that, based on this complaint, the Office of Public Prosecution brought a criminal suit against the members of the community for the crimes of aggravated usurpation of lands and assault on the natural and cultural heritage of the nation, instituting case No. 214-2004 before the First Trial Court for Criminal Matters and Crimes against the Environment of Poptún, Peten (hereinafter, "the Court of Peten").

9. Mr. Gamarro further contends that on March 10, 2004, the Court of Peten ordered the arrest of several community members. He alleges that on March 31, 2004, law enforcement officers of the Service for the Protection of Nature (hereinafter, "SEPRONA") and rangers of the National Council of Protected Areas (hereinafter, "CONAP") set up a task force to conduct the arrest of the community members and this operation led to the seizure of 30 thousand board feet of wood and his portable sawmill and the arrest of one community member. He further claims that on April 27, 2004, the Office of Public Prosecution requested authorization from the Court of Peten to transfer the wood and the portable sawmill to a safe place and the authorization was granted on the next day. He notes that in July 2004, officers of SEPRONA aided Mr. Roderico in dismantling the portable sawmill so the parts could be moved to a secret location on the farm along with the wood.

10. The petitioner alleges that, at that time, he was against the transfer of his property and asked for it to not be transferred. Nonetheless, he claims that he was informed by SEPRONA that the transfer was to be conducted under court order. He further contends that he attempted to send his son and other individuals at the time to monitor the transfer, but these people were greeted with gunshots.

11. The petitioner claims that, after not being able to prevent the deposit of his property in the custody of third parties and the transfer thereof to an unknown location, he took several steps to recover it and to request that the states agents responsible for the illegal deposit of the property and the third parties who had kept it, be held accountable.

12. Accordingly, he notes that he first filed a complaint against the assistant prosecuting attorney of the Office of Public Prosecution, Mr. Victor Hugo Rosales (hereinafter, "Mr. Rosales"), who was in charge of criminally prosecuting the community members, on the grounds that the proceedings brought by him were illegal. He contends that a report dated October 6, 2004, written by the Assistant Supervisor of the Office of Public Prosecution, confirms that Mr. Rosales had committed an administrative infraction: i) for initiating criminal proceedings and requesting the arrest of the community members without first investigating who was the owner of the farm that is the subject of that case; and ii) because he requested the seizure of the property, after a ruling had been issued finding the claim against the community member in custody to be groundless. He alleges that the Assistant Supervisor recommended that an administrative

proceeding be instituted against Mr. Rosales and his chief supervisor; however, neither of them received any punishment.

13. Secondly, he claims that he asked the Court of Peten to return his property. In this regard, he asserts that he had brought to the attention of the Court of Peten in September 2004 that the seized wood had been legally logged and requested that the wood and his sawmill be returned to him. He notes that in October 2004, Mr. Valle himself informed the Court of Peten that he was relinquishing his claim and dropping all criminal charges against the community members and requested that the property be returned to its owners, inasmuch as it had all happened as a result of “a misunderstanding.” He claims that, after some investigation was conducted, the Court of Peten ordered that the portable sawmill be returned to the petitioner, since prior ownership thereof had been proven by evidence that was on the record in the case file and that the wood should be returned to Mr. Estéban Tut Tzul (hereinafter, “Mr. Tut Tzul”), one of the community members who had sold the wood to Mr. Gamarro.

14. However, Mr. Gamarro argues that on October 12, 2004, the police informed the Court of Peten that it could not proceed with the return of this property to its owners because its whereabouts were unknown since the property had been left on the Mr. Valle’s farm under the custody of Mr. Roderico. He claims that the Court of Peten then requested Mr. Valle to instruct Mr. Roderico to return the aforementioned property to its owners. This request was denied by Mr. Valle in a brief submitted to the Court. Mr. Gamarro also contends that in November 2004, the Court was informed by Mr. Tut Tzul that: i) Messrs. Valle and Roderico were responsible for the disappearance of the wood and the portable sawmill; ii) in searching for the wood in the area surrounding the boundaries of the alleged farm of Mr. Valle, Mr. Tut Tzul and other community members ascertained that, after destroying the fencing and posts and burning their huts, around 20 gunmen transported community members’ wood to the farm; and iii) the gunmen had informed them that they had taken the wood and sawmill at the orders of the owner of the farm as a form of retaliation against the community members because they had prevented Mr. Valle from obtaining a logging permit from INAB. In response, the Court held that the alleged incidents should be reported to the Office of Public Prosecution.

15. The petitioner claims that in light of the Court’s response and Mr. Valle’s failure to comply with the order to return the property, he had to take additional steps to report the situation to the Office of Public Prosecution and request that those responsible be criminally prosecuted. He additionally contends that in December 2004, along with Mr. Tut Tzul, he filed a complaint with the Office of Public Prosecution for wrongful appropriation and withholding of property against Messrs. Valle and Roderico. He alleges that this complaint gave rise to criminal case 1361-2004, which was heard before the Trial Court for Criminal Drug Activity and Crimes against the Environment of the Department of Alta Verapaz (hereinafter, “the Court of Alta Verapaz”).<sup>1</sup> He claims that the Court of Alta Verapaz allowed the petitioner and Mr. Tut Tzul provisionally to become parties to the criminal prosecution as private complainants and civil plaintiffs.

16. Notwithstanding, despite the complaint being filed and criminal proceedings being instituted, the petitioner contends that he was denied access to justice, inasmuch as the Office of Public Prosecution never conducted a serious investigation into whether Messrs. Valle and Roderico were responsible for the disappearance of his property and nobody was punished.

17. Additionally, Mr. Gamarro notes that on September 14, 2005, the Office of Public Prosecution requested that the case against Mr. Valle be temporarily suspended. According to the petitioner, this suspension was requested so that the Office of Public Prosecution could request information from the Land Fund regarding who was the owner of the property from which the wood was extracted and, should there not be any owner, information on who would be most entitled to it. He contends that, at a hearing held on October 26, 2005, the petitioner objected to this request because he considered that ownership of the wood and portable sawmill had been previously proven by evidence in the case file and a determination on

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<sup>1</sup> Even though the complaint was initially brought before Court of Peten, at the request of the Office of the Public Prosecutor, this Court decided it did not have jurisdiction to continue to hear the case, because jurisdiction should be determined by the geographic location of the alleged farm of Mr. Valle and, therefore, transferred the case file to the Court of Alta Verapaz.

ownership of the land was not necessary in order to return those assets. He also claims that during the hearing the presiding judge granted the motion of the Office of Public Prosecution and suspended the case with regard to Mr. Valle.

18. Likewise, on January 24, 2006, the Office of Public Prosecution, moved for a temporary suspension of the case against Mr. Roderico on the same grounds and, on March 2, 2006, with the assistance of newly appointed counsel, the petitioner gave his consent to this measure, because he deemed it to be relevant for the Office of Public Prosecution to request comments from the Land Fund and from INAB in order to clarify that he and the community members had not illegally logged the wood.

19. The petitioner notes that because the case was suspended, his two options were either to file an appeal or, in his capacity as a private party to the criminal prosecution, provide evidence and move to resume the proceedings, as provided for under Article 331 of the Code of Criminal Procedure of Guatemala (hereinafter, "the CPP"). He says he chose the latter of the two options and that, in April 2006, he submitted a written brief to the Court of Alta Verapaz attaching thereto copies of reports prepared by the Land Fund and INAB containing the evidence that was missing. He notes that on this date he requested that the reports be forwarded to the Office of Public Prosecution for its response and for the criminal proceedings to be authorized to resume.

20. He further notes that, in response to the silence of the Office of Public Prosecution, in May 2006, the petitioner filed a motion with the Court of Alta Verapaz to set a deadline for the Office of Public Prosecution to respond to the motion to resume criminal proceedings. The motion was denied by the Court, inasmuch as it found that the Office had a period of five years to decide on resumption of the criminal proceedings. He contends that he filed an appeal for reconsideration of the ruling, which was granted and that on June 22, 2006, the Office of Public Prosecution requested the judge to allow resumption of the investigation. The request was granted on that same date.

21. The petitioner contends that despite the resumption of the criminal proceedings, the Office of Public Prosecution still failed to act and that, from June 2006 to the date of the lodging of his petition with the IACHR in February 2008, he took several steps to try to push the criminal proceedings along. He further claims that despite his efforts, the criminal proceedings were again stalled by the Office of Public Prosecution and that the suspension became a final dismissal of the criminal case against Messrs. Valle and Roderico, on October 27, 2010 and March 2, 2011, respectively, as a consequence of five years elapsing since the time the suspension was granted, in accordance with Article 345, quarter, of the CPP. Mr. Gamarro therefore considers the domestic remedies to have been exhausted.

22. He contends that all of the incidents listed above caused great damage to him. In this regard, he claims that he was dependent on the logging and the portable sawmill business to make a living to support his family. He argues that, in addition to the economic damage he endured as a result of the disappearance of his property, he was prevented from continuing his business and could not honor signed contracts with companies from Japan and the United States. He also alleges that he had to go into debt in order to be able to become a party to the domestic case as a private complainant. He also claims that he survived two attempts on his life, that his lands were taken by drug traffickers and that in 2012, the mayor of the municipality of Chahal, Alta Verapaz, destroyed the warehouses where he stored his products. He contends that he had to leave the country as a consequence of all of the aforementioned events and emigrate to the United States.

23. Mr. Gamarro claims that the authorities were never interested in criminally prosecuting Messrs. Valle and Roderico or in returning his property to him and were just waiting for the deadline to lapse for the dismissal of the case to become with prejudice. He contends that it was not the first time that he had problems with seizures of wood belonging to him. In this regard, he contended that in November of 2002, the police confiscated a truck and wood he owned and that he was also unsuccessful at recovering this property.

24. Based on the foregoing, the petitioner alleges that Guatemala is internationally responsible for the violation of the rights established in Articles 8, 21 and 25 of the American Convention to his detriment.

## **B. Position of the State**

25. With regard to the violation of the right to property, the State contends that preexisting ownership over the allegedly wrongfully taken property must be proven. It further argues that statements before the prosecutors and judge are insufficient to prove ownership and that the petitioner should have submitted business and tax records to justify the wood sale transactions. It also alleges that the judge who ordered the return of the seized property recognized Mr. Gamarro's right over the portable sawmill but not over the wood, which was supposed to be handed over to Mr. Tut Tzul, because he was the person who had the logging license. It further argues that ownership of the property where the wood was logged was never proven.

26. The State also claims that it cannot be held responsible for the disappearance of the property claimed by Mr. Gamarro since it had been left under the custody of Messrs. Valle and Roderico and it is their duty to return this property and pay any compensation for the loss thereof. Therefore, it contends that the claim for damages must be directed at those responsible for the commission of the crimes and not the State.

27. The State also argues that there was no violation of Articles 8 and 25 of the American Convention, inasmuch as the petitioner has had access to judicial mechanisms to assert his rights and the authorities have taken action to return his property to him and hold liable those allegedly responsible for the facts charged in the petition. In this regard, it contends that: i) in October 2004, the Court of Peten sent an official communication to the Chief of SEPRONA to proceed with returning the wood and portable sawmill; ii) in October, the Court of Peten requested Mr. Valle to return the portable sawmill to the petitioner and the wood to Mr. Esteban Tut Tzul; iii) in November 2004, the Court of Peten directed the Office of Public Prosecution to open the appropriate investigation and locate the portable sawmill and the 30 thousand board feet of missing wood; iv) in December 2004, the Public Prosecutor instituted criminal proceedings against Messrs. Valle and Roderico; v) in early 2005, the Public Prosecutor requested and the Court of Alta Verapaz issued an arrest warrant for the defendants; vi) the authorities apprehended Messrs. Valle and Roderico; vii) in June 2006, after having suspended criminal proceedings, the Court of Alta Verapaz ordered the resumption of the proceedings, in response to a motion filed by the Public Prosecutor; and viii) in September 2009, the Public Prosecutor requested that evidence be collected from the Land Fund in order to be able to identify the owner of the lands where the Community was located.

28. According to the State's contention, in March 2011, the date of the last communication of the State, the Public Prosecutor continued to move forward in the criminal proceedings against Messrs. Valle and Roderico, in order to locate the missing property and establish appropriate liability. It claims, consequently, that domestic remedies were not exhausted. It also argues that there has been no violation of Article 8 of the Convention because the length of the proceeding has been reasonable, in light of the complexity of the matter, the procedural activity of the interested party and the conduct of the judicial authorities.

29. Furthermore, the State contends that the petitioner cannot complain about the suspension of the criminal case, inasmuch as at the hearing held on March 2, 2006, Mr. Gamarro consented to this ruling. Additionally, it claims that despite having an opportunity to do so, Mr. Gamarro did not appeal the decision to dismiss without prejudice. It also argues that once the criminal proceedings resumed in June 2006, the petitioner, in his capacity as a private complainant to the criminal case, had the chance to aid in the investigation in order to step up the pace thereof.

30. In conclusion, the State contends that because of the failure to exhaust domestic remedies, the petition must be found inadmissible and that the alleged facts do not actually constitute a violation of the rights of the petitioner and requests the IACHR to rule as such.

#### **IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY**

##### **A. Competence**

31. The petitioner is entitled, under Article 44 of the American Convention, to lodge petitions with the Commission. The petition names as the alleged victim an individual, for whom the State of Guatemala has pledged to protect and ensure the rights enshrined in the American Convention. As for the State, the Commission notes that Guatemala has been a State Party to the American Convention since May 25, 1978, the date it deposited the instrument of ratification. Consequently, the Commission is competent *ratione personae* to examine the petition. The Commission is also competent *ratione loci* to hear the petition, inasmuch as it alleges violations of the American Convention, which are claimed to have taken place within the territory of Guatemala, a State party to said instrument.

32. The Commission is competent *ratione temporis*, because the obligation to respect and ensure the rights protected in the American Convention was already in force on the State when the facts alleged in the petition are claimed to have occurred. Lastly, the Commission is competent *ratione materiae*, inasmuch as the petition alleges possible violations of human rights protected by the American Convention.

##### **B. Admissibility Requirements**

###### **1. Exhaustion of Domestic Remedies**

33. Article 46.1.a of the American Convention requires prior exhaustion of domestic remedies, in keeping with generally recognized principles of international law in order for a petition to be admitted regarding an alleged violation of the American Convention. The purpose of this requirement is to allow domestic courts to first hear any cases of alleged violations of a protected right and, when appropriate, have the opportunity to settle the matter before it is heard in an international body. Additionally, Article 46.2 of the Convention provides that the prior exhaustion of domestic remedies requirement shall not be applicable when (a) the domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; (b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or (c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

34. The Commission notes that the parties submitted contradictory information regarding the current status of the investigations conducted to locate the seized property and hold the alleged culprits accountable for the acts charged in the complaint. On the one hand, the petitioner claims that he pursued the appropriate mechanisms and that the suspension of the case became an outright dismissal of the criminal proceedings against Messrs. Valle and Roderico, on October 27, 2010 and March 2, 2011, respectively. The petitioner does not provide any documents to prove dismissal of the criminal case and bases his argument on the text of Article 345, quarter, of the CPP in force at the time of the events. On the other hand, in its last communication of March 2011, the State contended failure to exhaust domestic remedies and claimed that the Public Prosecutor was still conducting the criminal proceedings.

35. The Commission notes that Article 345, quarter, of the CPP in force at the time provided that a criminal proceeding could be dismissed, when after being suspended, the case was not reopened in the subsequent five years. However, according to information provided by both parties, the criminal prosecution resumed in June 2006 and, based on publicly available information, the article of the CPP cited above was repealed by the National Congress of Guatemala on May 21, 2010, under Decree No. 18-2010. Based on the foregoing, the IACHR accepts the position of the State that the Public Prosecutor continued to criminally prosecute Messrs. Valle and Roderico.

36. The IACHR notes that the criminal prosecution for wrongful appropriation was instituted in December 2004 and there is no indication that it has concluded. In this regard, the Commission notes that as a general rule, a criminal investigation must be conducted promptly in order to protect the interests of the victims, preserve the evidence and even safeguard the rights of every individual, who in the context of the

investigation may be regarded as a suspect. The State contends that the period of time that has elapsed is reasonable given the complexity of the matter, the procedural activity of the interested party and the conduct of the judicial authorities. Additionally, it claims that the petitioner is able to aid in the investigation in order to bring it to a conclusion with greater alacrity.

37. According to the precedents established by the Commission, whenever an alleged criminal offense subject to public prosecution *ex officio* is involved, the State has the obligation to bring or institute criminal proceedings and, in these instances, such proceedings constitute the suitable mechanism to elucidate the facts, try those responsible and establish appropriate criminal punishments, in addition to provide for other means of pecuniary reparation.<sup>2</sup> The IACHR notes that the Criminal Procedural Code of Guatemala establishes that criminal prosecution for the crime of wrongful appropriation and withholding of property must be brought forward in a public trial stemming from a private complaint.<sup>3</sup> Therefore, since the petitioner had submitted the appropriate complaint and, based on the precedents of the IACHR, the Commission finds that the offense must be prosecutable *ex officio* and that the unwarranted delay exception to prior exhaustion of domestic remedies provided for in Article 46.2.c of the American Convention is applicable.

38. Given the very nature and purpose of Article 46.2 of the American Convention, it is a rule whose content stands alone *vis-à-vis* the substantive rules of the Convention. Therefore, the determination as to whether or not the exceptions to the rule on prior exhaustion of domestic remedies set forth in said provision are applicable to the case in question, should be made prior to and separate from an analysis of the merits of the matter, because it relies on a standard of evidence different from that used to determine whether there has been a violation of Articles 8 and 25 of the Convention. It should be clarified that the causes and effects that hindered exhaustion of domestic remedies in the instant case shall be analyzed, where relevant, in the report the Commission adopts on the merits of the claim, to verify whether there have in fact been violations of the Convention.<sup>4</sup>

## 2. Timeliness of the Petition

39. Article 46.1.b of the American Convention establishes that in order for a petition to be admissible before the Commission, it must be lodged within six months of the date on which the alleged victim was notified of the final decision adopted by domestic courts. In the claim under consideration, the IACHR has established that the exceptions to the rule of prior exhaustion of domestic remedies, as provided under Article 46.2.c of the American Convention, are applicable. In this regard, Article 32.2 of the Commission's Rules of Procedure establishes that when exceptions to prior exhaustion of domestic remedies are applicable, the petition must be lodged within a reasonable period of time, as determined by the Commission. For this purpose the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

40. In the particular case at hand, the IACHR has established that the exception to the rule on exhaustion of domestic remedies provided for in Article 46.2.c of the American Convention is applicable. It notes in this regard that the alleged incidents began in 2004; the petitioner filed complaints before the domestic courts and the Public Prosecutor in order to settle the criminal action brought by him which, based on available information, is still ongoing, and the IACHR received the petition on February 19, 2008. Consequently, in view of the context and the particular circumstances of the instant case, the Commission deems the petition to have been lodged within a reasonable period of time and that the admissibility requirement regarding timeliness of the petition must be considered fulfilled.

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<sup>2</sup> IACHR, Report No. 34/15, Petition 191-07 and others. Admissibility. Álvaro Enrique Rodríguez et al. Colombia. July 22, 2015, par. 246.

<sup>3</sup> Article 24, ter. of the Criminal Procedural Code of Guatemala.

<sup>4</sup> IACHR, Report No. 48/15, Petition 79-06. Admissibility. Yaqui People. Mexico. July 28, 2015, par. 56.



### 3. Duplication of Procedures and International *res judicata*

41. There is no evidence in the case file that the subject of the petition is pending in another international proceeding for settlement, nor that it is substantially the same as one previously studied by this or any other international organization. Therefore, the requirements set forth in Articles 46.1.c and 47.1.d of the Convention must be deemed as fulfilled.

### 4. Colorable Claim

42. For purposes of admissibility, the Commission must decide whether or not the facts alleged in the petition could tend to establish a violation of rights, as provided under Article 47.b of the American Convention, or whether the petition is “manifestly groundless” or is “obviously out of order,” as set forth in subparagraph “c” of said article. The standard for assessing admissibility is different from the one used to judge the merits of the petition, inasmuch as the Commission must make a *prima facie* evaluation to determine whether the petition includes a basis for an apparent or potential violation of a right protected by the Convention, but not whether such a violation occurred. This determination is a summary examination, which does not prejudge or provide an advance ruling on the merits of the matter

43. Neither the American Convention nor the IACHR Rules of Procedure require petitioners to identify the specific rights allegedly violated by the State in matters submitted to the Commission, even though the petitioners may do so. However, it is the duty of the Commission, in following the system of legal precedents, to determine in its admissibility reports, what provision of relevant Inter-American instruments is applicable and could be concluded to have been violated, should the alleged facts be proven by means of sufficient evidence and legal argument.

44. Mr. Gamarro claims to be the owner of property that was seized by the State and later deposited with third parties, though not as collateral. He further contends that the courts recognized that he was the owner of this property and ordered it to be returned. Additionally, he argues that it was never returned and that, despite filing a complaint against those responsible for the disappearance of the property, they were never found liable as a result of the Public Prosecutor’s failure to act. The State, in response, alleges that it cannot be held responsible for the loss of property because the property was under the custody of civilians and not state agents. It also argues that the courts have properly responded to Mr. Gamarro’s complaints.

45. In view of the factual evidence and legal arguments introduced by the parties and the nature of the matter before it, the IACHR finds that the allegations of the petitioner could tend to establish potential violations of rights protected under Articles 8, 21 and 25 of the American Convention, in connection with Article 1.1 of the same instrument, to the detriment of Mr. Gamarro.

## V. CONCLUSIONS

46. Based on the considerations of fact and law set forth above, the Inter-American Commission concludes that the instant petition meets the admissibility requirements listed under Articles 46 and 47 of the American Convention and, without prejudice to the merits of the matter,

### THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

#### DECIDES TO:

1. Declare the instant petition admissible with regard to Articles 8, 21 and 25 of the American Convention in connection with the obligations set forth in Article 1.1 of the same instrument;
2. Notify the parties of the instant decision;

3. Proceed to examine the merits of the matter; and
4. Publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Dado y firmado en la ciudad de Washington, D.C., a los 15 días del mes de abril de 2016. (Firmado): James L. Cavallaro, Presidente; Francisco José Eguiguren, Primer Vicepresidente; Margarete May Macaulay, Segunda Vicepresidenta; José de Jesús Orozco Henríquez, Esmeralda E. Arosemena Bernal de Troitiño, y Enrique Gil Botero, Miembros de la Comisión.